

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

C. AND C.S., FOR THEIR  
MINOR DAUGHTER H.S.  
Plaintiffs

V.

SILSBEE INDEP. SCH. DIST.,  
SUP'T. RICHARD BAIN, JR.,  
PRIN. GAYE LOKEY, SISSY  
McINNIS, DAVID SHEFFIELD,  
CHRISTIAN ROUNTREE, and  
RAKHEEM BOLTON  
Defendants.

[illegible]

C.A. NO. 1:09-cv-374

**OPPOSITION TO PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION FOR  
ATTORNEY FEES AND COSTS, AND TO PLAINTIFFS’ MOTION TO STAY  
PENDING APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Silsbee Independent School District (“SISD”) and Richard Bain, Jr. (“Bain”), by their attorney, and make and file this their Opposition to Plaintiffs’ Response to Defendants’ Motion for Attorney Fees and costs, and to Plaintiffs’ Motion to Stay Pending Appeal, and would show unto the Court:

1. By Order signed on February 23, 2010 [Clerk’s Docket 54], the Court granted Defendants SISD’s and Bain’s Second Restated Motion for Attorney Fees and Costs [45], filed on October 21, 2009.

2. As the Court noted in its February 23, 2010 Order, Plaintiffs filed no response to that motion.

3. On February 24, 2010, Plaintiffs purported to file [57] a “Response in Opposition re: [50] Motion for Attorney Fees Restated [45] Motion for Attorney Fees (Second Restated) Opposed by John Doe, Jane Doe, H.S.”

However, according to the Clerk’s tracking document, only a proposed order was submitted; no motion to stay or response in opposition were attached.

4. Also, on February 24, 2010, Plaintiffs filed Document 57-2, which is an exact duplicate of the proposed order [57], referred to as Plaintiffs’ Response to Defendants Motion for Attorney’s Fees and Costs and Motion to Stay Pending Appeal. Again, no motion to stay or response in opposition to Defendants’ attorney fees and costs motion was attached or filed.

5. According to the Clerk’s Civil Docket for this case, as of March 1, 2010, Plaintiffs have not filed a response in opposition to Defendants’ motion for attorney fees, or a motion to stay pending appeal; only two (2) identical proposed orders [57, 57-2] regarding Plaintiffs’ Response to Defendants’ Motion for Attorney Fees and Costs, and Motion to Stay Pending Appeal, have been filed.

6. By email dated February 24, 2010, Plaintiffs’ counsel inquired of counsel for Defendants SISD and Bain whether he would oppose a motion to stay by Plaintiffs. By email that same day these Defendants’ counsel advised Plaintiffs’ counsel that he would oppose a stay order regarding attorney fees and costs.

7. Inasmuch as Plaintiffs have not filed a motion to stay proceedings on appeal relating to the Court’s order granting attorney fees and costs, Defendants cannot specifically respond to any reasons Plaintiffs may claim to have for seeking such a stay; the identical proposed orders [57, 57-2] contain no reason or explanation. Accordingly,

Defendants must oppose such a stay under any circumstances on the ground that the ends of justice cannot be served by deferring a final judgment on the award of attorney fees and costs from Plaintiffs to these Defendants.

8. The Court's order awarding attorney fees and costs to these Defendants [56] found that Plaintiffs "failed to establish a *prima facie* federal claim"; that Plaintiffs' Section 1983 suit was "without foundation"; and that the action was "frivolous". Further, the Court concluded that these Defendants are entitled to the assessment of attorney fees and costs against Plaintiffs under the provisions of 42 U.S. Code § 1988, as amended.

9. On October 7, 2009, the Court granted Defendants' motions to dismiss [43]. On October 23, 2009, the Court entered final judgment [47].

10. Since the final judgment was filed, Plaintiffs have continued to pursue their claim by filing a Notice of Appeal [48], Notice/Request for Records [53], and have filed Appellants' initial brief with the U.S. Court of Appeal for the Fifth Circuit. During the time since final judgment was entered, Defendants have continued to incur attorney fees and costs in defending a suit that has been found to have "failed to establish a *prima facie* federal claim"; to be "without foundation"; and to be "frivolous."

11. Based on the foregoing, Defendants aver that the ends of justice cannot be served by delaying a final judgment for the award of attorney fees and costs, and that ordering a stay in these proceedings pending appeal would work an unjust hardship on these Defendants, who must continue to incur attorney fees and costs in defending this frivolous, meritless suit.

WHEREFORE, PREMISES CONSIDERED, Defendants Silsbee ISD and Richard Bain, Jr. pray that Plaintiffs' motion to stay proceedings pending appeal

regarding the award of attorney fees and costs be, in all things, DENIED, and that a judgment be entered mandating that award, and that Plaintiffs' response to Defendants' motions for attorney fees and costs be, in all things, **DENIED**, and be stricken as untimely.

Respectfully submitted,

WELLS, PEYTON, GREENBERG  
& HUNT, L.L.P.

*/s/ Tanner T. Hunt, Jr.*

By: \_\_\_\_\_

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ATTORNEYS FOR DEFENDANTS  
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DISTRICT AND RICHARD BAIN, JR.

CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of March, 2010, this document was electronically filed with the Clerk of the Court of the U.S. District Court, Eastern District of Texas, using the electronic filing system of the Court. The electronic filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice by electronic means, in compliance with Local Rule CV-5(a) of the U.S. District Court of the Eastern District of Texas.

*/s/ Tanner T. Hunt, Jr.*

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Tanner T. Hunt, Jr.